

Despite his significant responsibilities and demanding schedule, Dr. Skellern graciously made himself available for deposition in Sydney, Australia, on October 24, 2007. His deposition commenced at 9:09 am and did not conclude until 5:42 pm. The transcript was 287 pages long. He was directly examined by four different attorneys representing various of the defendants; Messrs. Levy, Shelton, Vasquez and Lam.

The present petition comes from Mr. Vasquez, who apparently feels that he was provided with insufficient time to ask his questions. However, how the various defendants chose to allocate their time was a matter for their discretion. CSIRO would agree that the deposition was not efficiently conducted, and that a great amount of time on the record was wasted, for example, in fishing expeditions such as that concerning a theory the Dr. Skellern was an omitted inventor, as well as in putting to him the sort of theoretical questions that are proper for an expert witness but not a fact witness.¹ But Defendants' choice to waste both their time and Dr. Skellern's time in the deposition is no basis for subjecting Dr. Skellern to a second day of deposition. The Network Defendants have offered no reason why all the subject areas listed in their petition could not have been thoroughly explored during the full day Dr. Skellern was deposed.

The Court's Discovery Order in this action provides that: "No single deposition of any one witness can exceed two consecutive business days, except by mutual agreement." The Network Defendants ignore that Order by seeking a second deposition nearly a year after the first. CSIRO understands that Dr. Skellern does not wish to be subjected to a second deposition,

¹ CSIRO would be happy to provide the Court with all or selected portions of the transcript of the deposition if the Court should wish to confirm these points for itself.

and the Network Defendants have failed to show a single relevant question that they could not have asked during his first deposition. The Court should deny the petition.

DATED: September 2, 2008

Respectfully submitted,

By: /s/ Gary H. Ritchey

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CERTIFICATE OF SERVICE

I hereby certify that counsel of record who are deemed to have consented to electronic service are being served this 2nd day of September 2008, with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3). Any other counsel of record will be served by electronic mail, facsimile transmission and/or first class mail on this same date.

_____/s/ Gary H. Ritchey

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